

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of

JACK COOPER HOLDINGS CORP.,
JACK COOPER SPECIALIZED TRANSPORT, INC.,
AND JACK COOPER TRANSPORT COMPANY, INC.

and

Case No. 09-CA-100184

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 89

JACK COOPER TRANSPORT COMPANY, INC.

and

Case No. 09-CA-101258

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 89

**CHARGING PARTY’S STATEMENT IN SUPPORT OF COUNSEL
FOR THE GENERAL COUNSEL’S MOTION TO CONSOLIDATE,
MOTION FOR DEFAULT JUDGMENT IN CASES
09-CA-100184 WITH CASES 09-CA-150482 AND 09-CA-101258**

The Charging Party, General Drivers, Warehousemen & Helpers Local Union No. 89 (hereinafter “the Union”), has been forced to expend considerable time and resources to fight for information that it is undeniably entitled to under the National Labor Relations Act (hereinafter “the Act”). An employer’s duty to bargain under Section 8(a)(5) of the Act includes the duty to furnish information relevant to a union’s performance of its duties under a collective bargaining agreement.¹ For the third time in six years, the Union requested information regarding a grievance and Respondents Jack Cooper Holdings Corp., Jack Cooper Specialized Transport, Inc., and Jack Cooper Transport Company, Inc. (hereinafter “the Respondents”) have refused to produce this information.

¹ *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1976).

The Union and the Respondents are parties to the National Master Automobile Transporters Agreement (hereinafter “NMATA”). The NMATA includes a Work Preservation Agreement (hereinafter “WPA”) that contractually limits the Respondents from diverting work to non-union carriers. Article 33, Section 4 of the NMATA states, “in the event that a Work Preservation Grievance is submitted, the Employer or Union may request, in writing, specific relevant information, documents or materials pertaining to such grievance and the other party shall respond to such request within fifteen (15) days of the receipt of such request.”²

Case 09-CA-150482 arose from a grievance that the Union filed on February 11, 2015.³ The Union believes the Respondents have been diverting car haul work to non-Union carriers and thus breaching the WPA. The Union filed the grievance after acquiring a vehicle transit order with information that Respondent Jack Cooper Logistics diverted a load of cars to Respondent Jack Cooper Transport.⁴ Because much of the Union’s market share in the eastern and western United States has already been lost to non-Union carriers, the Union requested information from Respondents about these carriers on February 11, 2015 and March 26, 2015. Access to the names of the non-union carriers would show the extent to which the Respondents are diverting bargaining unit work to other parts of the country.⁵ Despite multiple requests for the information, the

² Relevant portions of the NMATA are attached hereto as **Exhibit 1**.

³ The February 11, 2015 grievance is attached hereto as **Exhibit 2**.

⁴ Case 09-CA-150482 Hearing Transcript, 52, lines 19-25 (Nov. 17, 2015); Tr. 53, lines 1 – 8.

⁵ *Id.* at lines 22 – 24.

Respondents refused to comply with the Union's requests. The refusal left the Union with no choice but to file an unfair labor practice to address its harms.

On January 27, 2016, Administrative Law Judge Melissa M. Olivero found that the Respondents violated Section 8(a)(1) and 8(8)(5) of the National Labor Relations Act ("the Act").⁶ The Respondents again refused to comply with this ruling. Instead of providing the Union with the requested information, the Respondents filed Exceptions to Judge Olivero's decision on February 16, 2016.

Cases 09-CA-100184 and 09-CA-101258 also arose out of the Respondents' refusal to provide information the Union requested in relation to its February 2013 grievance. The 2013 grievance alleged that the Respondents violated Article 33 of the NMATA and the WPA. In an effort to resolve this matter amicably, the Union agreed to become a party to the informal settlement agreement with the Respondents and Region 9 that ensured the Union would receive the requested information. In the agreement the Respondents also stated they would cease and desist from "unreasonably delaying and refusing to provide the Union with information that is relevant and necessary to its role as the employees' bargaining representative."⁷

By refusing to provide the requested information to the Union in 09-CA-150482, the Respondents violated not only the informal settlement agreement between the parties, but also the terms and conditions of the NMATA. Region 9 entered into an informal settlement agreement with the Respondents with the good faith belief that the Respondents would abide by its promise not to withhold information. As the Respondents have failed to abide by the terms and

⁶ G.C. Ex 6 at 12, lines 1-3.

⁷ See G.C. Ex. 3(a) and 3(b).

conditions of the settlement agreement, the Union respectfully requests that the three cases be consolidated and default judgment be granted for the General Counsel.

Respectfully submitted,

/s/ David O'Brien Suetholz
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COUNSEL FOR CHARGING PARTY

CERTIFICATE OF SERVICE

I hereby certify the above Charging Party's Statement in Support of Counsel for the General Counsel's Motion to Consolidate, Motion for Default Judgment has been electronically filed on this the 24th day of March 2016 with the Division of Judges, National Labor Relations Board, 1015 Half Street SE, Washington D.C. 20570 and a copy was served upon the following persons via email and first class mail postage prepaid:

Kenneth Zatkoff
DEAN & FULKERSON P.C.
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COUNSEL FOR RESPONDENT

A copy was served upon the following persons via first class mail postage prepaid:

Erik Brinker
National Labor Relations Board, Region 9
John Weld Peck Federal Building
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Cincinnati, Ohio 45202
COUNSEL FOR GENERAL COUNSEL

/s/ David Suetholz
David O'Brien Suetholz

NATIONAL MASTER AUTOMOBILE TRANSPORTERS AGREEMENT



For the Period of
June 1, 2011
through
August 31, 2015

**ARTICLE 32.
METRIC SYSTEM**

Recognizing that the standard of measure in the United States is to be converted to the metric system in the near future, it is agreed that a special committee will be appointed to study the revised pay scales that will eventually result, such as "Cents per Kilometer, etc." and report during the life of this contract on procedure for the conversion factor from miles to kilometers, etc.

**ARTICLE 33.
WORK PRESERVATION**

Section 1.

For the purpose of protecting and preserving Carhaul Work (as defined in the Work Preservation Agreement for Signatory Employers, but excluding office units except as provided in the Western Area Office Supplement) for the Employer's bargaining unit employees, eliminating contracting and double breasting practices under which Employer permits persons other than Employer's bargaining unit employees to perform Carhaul Work, and preventing any scheme or subterfuge to avoid the protection and preservation of Carhaul Work under this Agreement, the Employer agrees that it shall not undertake to, nor permit any Controlled Affiliate (including freight broker companies as these terms are defined in the Work Preservation Agreement for Signatory Employers) to subcontract, transfer, lease, divert, contract, assign or convey, in full or in part, any Carhaul Work to any Controlled Affiliate, plant, business, person or non-unit employees other than Employer, or to any other mode of operation, except as explicitly and specifically provided for and permitted in the NMATA and/or applicable Supplemental Agreements.

The Employer agrees that it shall not permit any Controlled Affiliate other than Employer to perform any Carhaul Work and that no Carhaul Work shall be performed by any Controlled Affiliate other than Employer.

Notwithstanding any other provision of this Article or Agreement, a Signatory Employer or a Controlled Affiliate may acquire and operate an entity not currently covered by the NMATA that performs Carhaul work subject to terms and conditions that are acceptable to Teamsters National Automobile Transporters Industry Negotiating Committee.

Section 2.

None of the above limitations shall apply and do not prohibit the following activities by the Employer:

Article 33

(a) Trip leases, load exchange and return haul arrangements, otherwise not in violation of this Agreement or its Supplemental Agreements, between Employers within the multi-employer unit;

(b) Assignment or subcontract of maintenance-related work involving the specific areas designated below:

(1) Work not presently assigned to the bargaining unit;

(2) Where the Employer does not have appropriate facilities, available equipment or employees with requisite skills to perform the specific maintenance work and has no employees on layoff in job classifications affected by the assignment or subcontracting;

(3) Taking advantage of original warranties (i.e. 100% parts and labor) or guarantees for the maintenance and repair of new equipment, including replacement engines and component parts, where such original warranties or guarantees are provided by the supplier at no extra cost to the Employer. The Union will be permitted to examine copies of any warranties;

(4) Repair work performed at points en route as needed;

(5) Road call work will be based on past practice.

Section 3.

(a) All grievances alleging a violation of Article 33, Section 1 (excluding grievances raising issues under Article 33, Section 2 (b)) and grievances alleging a violation of the Work Preservation Agreements which have been incorporated into and printed with this Agreement must be reduced to writing and presented to the Employer no later than thirty (30) days after the dispute or grievance arises and shall be processed in the expedited manner set forth below.

(1) **Grievance Form.**

A grievance alleging a violation of Article 33, Section 1 or a violation of the Work Preservation Agreement shall be reduced to writing by the Local Union utilizing a form containing the following information:

(i) Identity of the party filing the grievance;

(ii) Identity of the signatory Employer and the alleged double-breasted company, if applicable;

Article 33

- (iii) Description of the bargaining unit work that has been diverted;
- (iv) The date the party became aware of the alleged violation;
- (v) The date the local level hearing was held; and
- (vi) The specific remedy sought.

(2) Answer.

The Parent or Employer named in the grievance shall provide a written response to the grievance within ten (10) days of their receipt of the grievance, fully describing the reasons relied upon in support of the position taken and providing documents that are relied upon in support of the position.

(3) Expedited Local Level Hearing Procedures.

(i) A local level hearing must be held within fifteen (15) days from the date of the Company's receipt of the grievance.

(ii) At the local level hearing, the parties shall verify that the grievance is appropriate for expedited arbitration. If the parties are unable to agree, the parties shall put their respective positions in writing and forward them to the National Co-Chairpersons along with the completed grievance form. Only the grievant, Steward and full-time employees of the Local Union and the Employer shall be present and/or participate in the local level hearing.

(4) The National Joint Arbitration Committee Union and Employer Co-Chairpersons shall convene within fifteen (15) days from receipt of the fully completed grievance form and position letters from the parties to determine whether the grievance is appropriate for expedited arbitration. In the event the National Joint Arbitration Committee Co-Chairpersons are unable to agree, the grievance shall be referred directly to the Board of Arbitration.

(5) Board of Arbitration.

The Board of Arbitration shall consist of the following three (3) members:

(i) One (1) member to be appointed by the Union Co-Chairperson of the National Joint Arbitration Committee;

(ii) One (1) member to be appointed by the Employer Co-Chairperson of the National Joint Arbitration Committee; and

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(iii) The two (2) Co-Chairpersons of the National Joint Arbitration Committee shall appoint a third (3rd) neutral arbitrator from the list of arbitrators created under Article 7, Section 9.

The Board of Arbitration shall have the authority to interpret and apply the provisions of the Work Preservation Agreement, this Agreement or Supplements thereto, where appropriate, but shall not have the authority to amend or modify the Work Preservation Agreement, this Agreement or Supplements thereto or establish new terms and conditions under the Work Preservation Agreement, this Agreement or Supplements thereto.

(b) The cost of the neutral arbitrator shall be shared equally by both the Local Union and the Employer involved. In the event the Employer or the Local Union is responsible for the Board of Arbitration's failure to timely process the grievance as provided in Section 3(c) below, the party responsible for the delay shall be obligated for the full cost of the neutral arbitrator. A case may be postponed only once by written mutual agreement of the parties.

(c) The Board of Arbitration shall schedule a standing four-day hearing session for the week following the quarterly meeting of the National Joint Arbitration Committee (the "Standing Session") in which the Board of Arbitration shall hear and dispose of each Work Preservation Grievance filed in the prior calendar quarter.

In the event that more than two (2) Work Preservation Grievances are scheduled for a Standing Session, the Board of Arbitration may, by unanimous vote of its members, schedule additional hearing days within fifteen (15) days of the conclusion of the Standing Session. The Board of Arbitration shall issue its decision on each Work Preservation Grievance submitted to the Standing Session within sixty (60) days of the conclusion of the hearing on the Work Preservation Grievance.

(d) If the Board of Arbitration determines that the Employer or any party to the Work Preservation Agreements has violated Article 33, Section 1 or the Work Preservation Agreement, then the Board of Arbitration may in addition to and without prejudice to any other remedy, (1) order specific performance of the Employer's obligations under the Agreement and include an appropriate cease and desist order in its remedy and (2) order the Employer to compensate the affected employees covered by the Agreement for any and all wages and benefits lost by such employees.

(e) The National Union Committee, the Local Union and the Employer shall comply with any final decision of the Board of Arbitration in all respects within ten (10) days of the final decision without regard to whether the National Union Committee, the Local Union or the Employer has brought any action or proceeding to review, modify, enforce, confirm, vacate or set aside the decision. An Employer or Union challenging a decision issued by a Board of Arbitration in the above manner shall pay the other party the cost of such

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challenge, including the Court costs and reasonable attorneys fees if the Court does not modify or vacate the Board of Arbitration decision.

(f) The provisions of Article 7, Section 9 (d) and (f) shall not apply to the Board of Arbitration proceeding arising under these provisions; the Board of Arbitration shall not be obligated to render decisions at the time of the hearing; and Briefs may be filed by any party, including TNATINC, the Local Union, and the Employer.

Section 4.

Right to Information

In the event that a Work Preservation Grievance is submitted, the Employer or Union may request, in writing, specific relevant information, documents or materials pertaining to such grievance and the other party shall respond to such request within fifteen (15) days of the receipt of such request.

If, and to the extent that, the Employer or the Union fails or refuses to comply with this request for information, for any reason, the Employer or the Union may request a subpoena duces tecum from the majority of the Board of Arbitration requiring that the information be produced by the Employer or the Union or any other entity or person. If, and to the extent that the subpoenaed party fails or refuses to comply with a subpoena issued by the majority of the Board of Arbitration, the Union or the Employer may seek enforcement of the subpoena in federal court pursuant to Section 301 of the Labor-Management Relations Act of 1947, as amended.

If, and to the extent that the Employer or Union fails to comply with this provision for any reason, the other party may argue that the Board of Arbitration should draw an adverse inference concerning the subject matter of the information that the party failed to provide the other party within fifteen (15) days.

Section 5.

Employers shall not relocate existing operations to locations outside of the jurisdiction of a Local Union signatory to this Agreement for the purpose of evading this Agreement.

If new operations are established by a signatory Employer, the Employer will negotiate in good faith with the affected Local Union regarding staffing.

(See separate attachment of Work Preservation Agreements.)



General Drivers, Warehousemen & Helpers Local Union No. 89

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Wednesday, February 11, 2015

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NMATA Grievance

Teamsters Local Union 89 files this grievance against Jack Cooper Holdings Corp., Jack Cooper Transport, and Jack Cooper Logistics, LLC. for violating the Work Preservation Agreement (WPA) and Article 33 of the National Master Automobile Transporters Agreement (NMATA).

In accordance with the Article 33, Section 3 of the NMATA, the following grievance is filed by:

- i) International Brotherhood of Teamsters Local Union 89

Against:

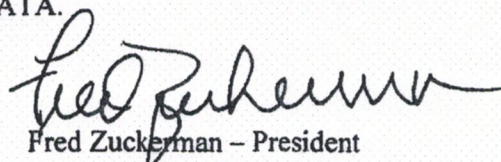
- ii) Jack Cooper Holdings Corp (Signatory Employer WPA), Jack Cooper Transport (Signatory Employer WPA and NMATA), and Jack Cooper Logistics, LLC (Controlled Affiliate).
- iii) The Controlled Affiliate has diverted bargaining unit work currently performed by bargaining unit employees domiciled in Bowling Green, Warren County, Kentucky and the surrounding geographic area and is otherwise currently diverting bargaining unit work covered under the NMATA. The bargaining unit work consists of hauling vehicles from terminals in Louisville/Jefferson County Kentucky and the surrounding area and other areas covered by the NMATA and Central-Southern and Eastern Supplements.
- iv) January 14, 2015 via Auction to Auction Vehicle Transit Order from Manheim, New Jersey.
- v) Teamsters Local Union 89 requests a local level hearing to be held within fifteen (15) days of receipt of this grievance. Please contact:

Fred Zuckerman, President
Teamsters Local Union 89
3813 Taylor Blvd.
Louisville, KY 40215
Tel: (502) 367-8420

Article 33 section 3 (a) (3) (i) requires a local level hearing to be held within fifteen (15) days of receipt of this grievance.

- vi) For Jack Cooper Holdings Corp to cease and desist diverting bargaining unit work to its controlled affiliate Jack Cooper Logistics, LLC under the NMATA.

Please provide a written response to this grievance within ten (10) days of receipt as required by Article 33 section 3 (a) (2) of the NMATA.


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cc : Avral Thompson
Robert Colone Esq.
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